IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.926 OF 2005
WITH
CIVIL APPLICATION NO.1087 OF 2005

Kiran Dharamsey Asher & Anr. ...Appellants.
Vs.
Dr.Ravi B. Shah & Ors. ...Respondents.
....
Mr. Mahendra H. Shah, Senior Advocate with Mr. V.R. Tripathi i/b. J. R. Vakil & Associates for the Appellants.
Mr.V. A. Thorat with Mr. P.S. Dani and Mr.Anil Gala for Respondent No.1.
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CORAM : DR. D.Y. CHANDRACHUD, J.

December 7, 2005.

P.C.:

At the hearing of the appeal which arises against an order of the City Civil Court dated 25th August 2005 in a motion for an interlocutory order of injunction, Counsel appearing on behalf of the Original Plaintiff prays for leave to withdraw the suit instituted before the City Civil Court with liberty reserved to institute a substantive suit in the appropriate forum on the same cause of action. This request is not opposed. The suit before the City Civil

Court, S.C. Suit No.1707 of 2005 is accordingly dismissed as withdrawn with liberty reserved as prayed. In these circumstances, Notice of Motion No.2674 of 2005 before the City Civil Court does not survive.

In view of the withdrawal of the suit, the judgment and order of the City Civil Court dated 25th August 2005 is quashed and set aside by consent without the expression of any opinion by this Court on the merits of the rival contentions.

Mr.M. H. Shah, Learned Senior Counsel appearing on behalf of the Appellants states that in respect of Building No.4 which is a building which is part of the free sale component in the Slum Rehabilitation Project, 15,000 sq.ft. of FSI out of the available 60,000 sq.ft. has not been alienated by the creation of third party rights and, that for a period of four weeks from today, no third party rights or interest whatsoever shall be created. Counsel states that by 12th December 2005, the Appellants shall file an affidavit before this Court, with a copy to the Counsel appearing on behalf of the Plaintiff, indicating either flatwise or floorwise areas which are unencumbered in Building No.4. The aforesaid

statement shall continue to remain in operation till the expiry of a period of four weeks from 12th December 2005 without prejudice to the rights and contentions of the parties. The appeal is accordingly disposed of by consent in the aforesaid terms.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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